

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA,

4 v.

20 CR 623 (JSR)

5 WILLIE DENNIS,

6 Defendant.

Conference

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7  
8 New York, N.Y.  
9 October 7, 2022  
11:10 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the  
16 Southern District of New York

17 BY: SARAH L. KUSHNER

KIMBERLY RAVENER

18 STEPHANIE SIMON

Assistant United States Attorneys

19 WILLIE DENNIS, Defendant Pro Se

20 Also Present:

21 Michael Mueller

22 Hadassa Waxman

1 (Case called)

2 MS. KUSHNER: Good morning, your Honor, Sarah Kushner,  
3 Stephanie Simon, and Kimberly Ravener for the government.

4 THE COURT: Good morning.

5 Mr. Dennis, can you hear me?

6 THE DEFENDANT: Yes, your Honor, I can hear you.  
7 Willie Dennis here.

8 THE COURT: Excellent.

9 Then we have some lawyers with respect to certain of  
10 the subpoenas.

11 Before we deal with the motions *in limine*, we will  
12 deal with the two outstanding subpoena issues.

13 THE DEFENDANT: Your Honor, I would like, before we  
14 begin the proceedings, make a motion to dismiss. I move to  
15 dismiss the indictment on two bases.

16 First, I have a constitutional right to confront my  
17 accusers, but quashing the subpoenas of K&L Gates' executive  
18 management team has denied me that right of confrontation. K&L  
19 Gates' executive management team were the ones who triggered  
20 the indictment against me. They were the persons whose conduct  
21 I was complaining about because they were harming both the firm  
22 and, second, squashing the subpoena deprived me of proving  
23 my -- the statute reads that I must show that I have intent to  
24 injure or harass. The statute states basically once -- the  
25 government put prove my intent to kill, injure, harass,

intimidate, or place under surveillance with intent to kill, injure, or harass or intimidate another person using emails. The top count against me requires proof beyond a reasonable doubt that it was my intent in sending these emails to intimidate or cause fear in the recipients. That was never my intent. I was trying to serve the firm's best interests and protect my financial rights.

The executive team expelled me from the firm, violating multiple provisions of the firm's bylaws, because I insisted on remedying gender discrimination, sexual discrimination, race discrimination, and poor management.

The objective proof of my intent is the business conduct, the multiple acts of mismanagement which justified my emails. Without that context, a jury will simply read the emails and count the number sent. They will rely on the content of the message without any content to understand it.

Just days before trial I have no counsel, no evidence, and no lawyers. I will only be able to sit and listen to the prosecution talk about my intent with no ability to explain the truth to the jury.

As evidence of this, I point to the fact that, as the Court has recognized, that in the sealed indictment, in the first footnote, it says that: Between on or about September 4, 2019 and/or about September 20, 2019, Mr. Dennis sent at least approximately 200 written communications to the victim and

1 other members of the law firm.

2 The Court also knows that, on September 4, armed New  
3 York City Police Officers were sent to my home at 10:30 at  
4 night in order to deliver a threat to me not to send any more  
5 emails.

6 The Court is also aware from the documents that K&L  
7 Gates, in September 2019, also sent Chicago police officers,  
8 off-duty Chicago police officers, to surveil me at a conference  
9 at the Marriott Hotel.

10 So the only person who has actually been put in  
11 physical harm's way has been me and my family with armed people  
12 around us. The only way that the officer would come to my home  
13 was basically as a result of K&L Gates' management team filing  
14 a complaint which ultimately the district attorney's office  
15 declined to prosecute.

16 That night, if something would have happened to me, as  
17 we have seen in the news over the last two years, if I had been  
18 shot, then this would be a very different story. Luckily, I  
19 was not. But to have it happen again with armed men around me  
20 in September in Chicago, luckily, again, I was not injured.

21 Now, the district attorney's office essentially said  
22 to me that we are going to decline to prosecute. But you have  
23 the ability to tell your story as to these incidences, and we  
24 can decide whether we investigate.

25 At this point I'm not even being allowed to question

1 the individuals who authorized these activities which put me in  
2 physical harm and the big part of the context in which me  
3 emails were sent. We will talk about the emails and how they  
4 felt like they were intimidating, I was actually -- my family  
5 members and I were actually in harm's way.

6 THE COURT: Thank you, Mr. Dennis, for arguing the  
7 motion. I should note for the record that Mr. Dennis, at his  
8 request, is appearing here by video today.

9 The motion is denied. With respect to the first prong  
10 in the motion confronting accusers, of course that means that  
11 at trial you get to cross-examine and confront those who are  
12 being called as government witnesses against you, and of course  
13 Mr. Dennis will have that full right.

14 With respect to the question of intent, that is, in  
15 this case, as in most cases, a jury question. The government  
16 asserts, and the grand jury has found, that there is probable  
17 cause to believe that Mr. Dennis acted with criminal intent,  
18 but Mr. Dennis firmly denies that and will have the opportunity  
19 to make that denial, either if he takes the stand, or even if  
20 he doesn't take the stand, which of course is his  
21 constitutional right to do, to either take the stand or not  
22 take the stand, both protected by the Constitution. He will be  
23 able to either call other witnesses or, through  
24 cross-examination and argument, present his view of his intent.

25 The motion is denied.

1           Let's now turn --

2           THE DEFENDANT: Your Honor, just for the record, to be  
3 clear, my accusers are not coming to court. They will not be  
4 in the courtroom that day. So I will not have an  
5 opportunity --

6           THE COURT: You misunderstand the law in this area.  
7 Of course you have chosen, as is your right, to appear *pro se*.  
8 But I would ask you, since you are a lawyer, even though you  
9 are not a trial lawyer, to take a look at the relevant  
10 decisions of the Supreme Court. This includes the *Crawford*  
11 case, the *Melendez Diaz* case, and a whole bunch of cases that  
12 define what is meant by the right to confront your accuser.  
13 Then you would realize that it doesn't mean that you have a  
14 right to confront someone who happened to go to the government  
15 with a complaint against you, but rather that you have a right  
16 to confront those people who testify against you at trial. You  
17 might want to take a look at those cases.

18           I think we need to move on, Mr. Dennis.

19           You had requested that we postpone until today the  
20 motion to quash your subpoena against Lawrence Platt. I  
21 granted your request.

22           Let me hear now first from counsel for Mr. Platt, who  
23 should go to the rostrum and identify herself.

24           MS. WAXMAN: Thank you very much, your Honor, this is  
25 Hadassa Waxman for movant Lawrence Platt, and I respectfully

1 request that your Honor quash the subpoena served on Mr. Platt  
2 by Mr. Dennis.

3 Your Honor, Mr. Platt left the K&L Gates law firm in  
4 2016 and has had zero contact with the defendant since that  
5 time other than a handful of emails that Mr. Dennis sent to  
6 Mr. Platt in or about 2021 to which Mr. Platt did not respond.  
7 Therefore, Mr. Platt does not and indeed cannot have any  
8 information that is relevant to any issue here at trial or any  
9 issue relevant to Mr. Dennis' defense.

10 On that basis, your Honor, we respectfully request  
11 that you quash the subpoena to Mr. Platt.

12 THE COURT: Mr. Dennis.

13 THE DEFENDANT: I think the first point that I'll  
14 make, your Honor, was that Mr. Platt was included on my witness  
15 list in the civil case before Judge Wojkowski. By including  
16 Mr. Platt on the no-contact list, I was effectively precluded  
17 from talking to Mr. Platt directly myself.

18 As a result of him being included in the non-contact  
19 list, the only way I've been able to contact him was by issuing  
20 a subpoena to him where he otherwise would have been, in my  
21 opinion, a favorable witness to me. But the government, again,  
22 prevented me from contacting him by adding him onto the  
23 no-contact list.

24 So from that vantage point, the one point I'll ask the  
25 Court is, since the Court has squashed the subpoenas with

1 respect to the other people and the Court has essentially said  
2 that the no-contact list has no value or not sure why the  
3 government has made this list, I would like for the Court to  
4 immediately make it null and void so I could begin to talk to  
5 the people on that list.

6 THE COURT: Excuse me. Let me interrupt you.

7 You anticipated the issue I was going to raise. I had  
8 invited you repeatedly to make a motion with respect to the  
9 no-contact list itself, and I take it you are now making that  
10 motion, and we will consider that motion then in a minute.

11 But what I hear you saying is that really you have, as  
12 was the case with the other subpoenas, you now are dropping  
13 your demand for the document part of the subpoena and all  
14 you're really interested in is whether you can call Mr. Platt  
15 as a witness at trial. Is that right?

16 THE DEFENDANT: Yes. May I further address -- one of  
17 the reasons why I would like Mr. Platt's testimony is because,  
18 as a former member of the executive committee, I am -- I would  
19 like for him to testify to the fact that we discussed as to  
20 whether the firm, K&L Gates, has ever filed a criminal  
21 complaint against a partner which resulted in police going to  
22 his home at 10:30 at night.

23 THE COURT: Excuse me, because we have got to move  
24 this on. As I made clear in our last conference, this hearing  
25 today must be concluded by 1:00 because I have to perform a



1 wedding in upstate New York.

2 So to move things along, I doubt very, very much that  
3 any of that evidence would be admissible at trial, but let's  
4 keep things separate.

5 The first thing I want to address is that now that  
6 Mr. Dennis has finally made a motion to strike the no-contact  
7 list, let me hear from the government, and then we will come  
8 back to counsel for Mr. Platt.

9 Let me hear from the government how this list came  
10 about and what your position is with respect to the list.  
11 Because this all occurred when this case was before Judge  
12 Schofield.

13 MS. KUSHNER: Thank you, Judge. Would you like me to  
14 go to the podium?

15 THE COURT: You can stay there.

16 MS. KUSHNER: So the list was compiled in consultation  
17 with the FBI based on the defendant's own emails that the  
18 government had already obtained pursuant to search warrants as  
19 of November 2021, as well as text messages that the government  
20 had obtained from victims' cell phones. At that time we did  
21 not yet have the defendant's own phone. But this was all based  
22 on the defendant's own words and contact with these third  
23 parties who did not respond to these unwanted emails.

24 THE COURT: So is this ordered by Judge Schofield?

25 MS. KUSHNER: Judge, it was ordered by --

1 THE COURT: Mr. Dennis, let her finish.

2 Go ahead.

3 MS. KUSHNER: It was ordered by Judge Wang after what  
4 was a two-plus-hour bail hearing where the defendant was  
5 directed not to have any contact with current or former  
6 employees of K&L Gates, which of course would include Lawrence  
7 Platt here, as well as additional names that the government  
8 said it would promptly provide to both defense and pretrial  
9 services.

10 THE COURT: Let's take the immediate case, which is  
11 Mr. Platt. The assertion by Mr. Dennis is that this is someone  
12 who he believes could give favorable testimony to him and that  
13 for that reason it was included in his witness list that was  
14 submitted to the American Association of Arbitration in  
15 connection with the civil case and that it would be helpful to  
16 him to at least reach out to Mr. Platt. Mr. Platt, of course,  
17 can tell him that he doesn't want to talk to him or have any  
18 contact with him.

19 But his point, Mr. Dennis' point, is that before he  
20 can call a witness at trial, he at least would like the  
21 opportunity with respect to someone who he believes would have  
22 favorable evidence to make contact with him.

23 Now, I can see why that might have been premature at  
24 the time Judge Wang issued this order. But now that we are so  
25 close to trial and Mr. Dennis needs to make his final

1 determination of who, if anyone, he wants to call on his  
2 behalf, it's hard for me to see why he should be precluded from  
3 at least trying to make contact with those people. I have a  
4 feeling they may choose not to talk to him, which is their  
5 right, but I don't see why he should be precluded from this  
6 opportunity. Indeed, as I pointed out to him many times, I  
7 invited him to make this motion even earlier, but now he has  
8 made it.

9 MS. KUSHNER: Your Honor, first off, the government  
10 would ask that the defendant proffer why he believes Mr. Platt  
11 has any favorable evidence.

12 THE COURT: Why does he have to do that? Let's take a  
13 normal case. Even if a defendant was precluded, as part of a  
14 bail condition, from having any contact with a prospective  
15 witness because of other concerns, his or her counsel would  
16 typically not be so precluded and that counsel wouldn't have to  
17 tell the government up front why he or she wanted to contact  
18 that person, which might reveal defense strategy. They could  
19 just do it. Of course there is this oddity here that  
20 Mr. Dennis, in what I can only consider an exercise of poor  
21 judgment, has decided to represent himself, but that's his  
22 right.

23 THE DEFENDANT: Your Honor, I would like to object --

24 THE COURT: Excuse me, Mr. Dennis. I am going to  
25 finish my statement, as I let you finish yours earlier, and

1 then I will hear from you.

2 THE DEFENDANT: Thank you, your Honor.

3 THE COURT: I don't see why he should at this stage be  
4 precluded from contacting Mr. Platt.

5 MS. KUSHNER: Your Honor, based on the government's  
6 evidence, the fact that Mr. Platt was a recipient of harassing  
7 and threatening text messages from the defendant, if the  
8 defendant is given permission, we would ask that any contact to  
9 Mr. Platt be through Mr. Platt's counsel, at least in the first  
10 instance, and not to him directly.

11 THE COURT: Well, we will hear from counsel in a  
12 minute, but that has nothing to do with you. You are not  
13 Mr. Platt's counsel. It sounds to me like what you are doing  
14 is seeking to enforce, even at this late date, the no-contact  
15 order of Judge Wang. While I would have to consider that  
16 individually with respect to various witnesses, with respect to  
17 Mr. Platt, I am going to vacate the order and allow Mr. Dennis  
18 to contact Mr. Platt, if his counsel so permits.

19 Now let's turn to counsel. Just so you will  
20 understand this, Mr. Dennis, no one can ever contact someone  
21 who is represented by counsel except by first contacting their  
22 counsel. I'm sure you know that from your own practice. While  
23 I have removed effective immediately the no-contact order with  
24 respect to Mr. Platt, that means you still have to make contact  
25 initially through his counsel. Let me hear from his counsel.

1 MS. WAXMAN: Thank you very much, your Honor.

2 I would ask Mr. Dennis not to make any contact with,  
3 whether it be by email, text message, phone call, or personal  
4 visit to Mr. Platt. My understanding, based on discussions  
5 with Mr. Platt, is that he does not wish to speak to  
6 Mr. Dennis.

7 Just to give context, your Honor, it seems, from  
8 Mr. Dennis' representations earlier, he would like Mr. Platt to  
9 testify about whether seven years ago the management committee  
10 filed a criminal complaint against another partner at the firm.  
11 That itself, your Honor, I would submit, is not relevant.

12 In any event, of course, no management committee at  
13 any law firm has any authority to file a criminal complaint.  
14 So I cannot imagine Mr. Platt would have any relevant evidence  
15 to Mr. Dennis, and, as such, I would request that Mr. Dennis  
16 not make any contact with Mr. Platt.

17 THE COURT: Here is my ruling.

18 THE DEFENDANT: Your Honor, you said you were going to  
19 give me a chance to respond.

20 THE COURT: I'm sorry, yes. I'm sorry, Mr. Dennis.  
21 Go ahead.

22 THE DEFENDANT: I think that what we are looking at is  
23 now we are effectively -- number one, as I raised before, I had  
24 raised this issue with Mr. Kelly of the Federal Defenders, this  
25 no-contact list, in which I asked him to approach the

1 government about dealing with this and understanding why these  
2 individuals were on there. As a result of them being on there,  
3 I was prevented from having any conversation with them until  
4 now.

5 Your Honor has entered into the record repeatedly that  
6 he has asked me or given me the opportunity to make an  
7 application to the Court. But what your Honor doesn't seem to  
8 recognize in his remarks is that the reason why I'm  
9 representing myself *pro se* is because I have no funds, because  
10 the government had me with an ankle bracelet and under home  
11 detention during this whole period, a very draconian treatment  
12 for someone 60 years of age who has no criminal record. This  
13 prevented me from having any funds to hire counsel.

14 What I also point out to the Court is that the Court  
15 has said, Mr. Dennis, you have the opportunity to make an  
16 application. When I say I'm representing myself *pro se*, what I  
17 mean is, it's just me and my iPad and my mother and father.  
18 The government has four attorneys on this matter, two  
19 paralegals, including Damian Williams, helping them. Everyone  
20 else has a number of lawyers, and they have their paralegals  
21 and they have their assistants. When I talk about representing  
22 myself, the detriment to me is not having the resources that  
23 the other parties have.

24 So making an application or doing anything else in  
25 this case is not just simply me being able to do it, but me

1 having the resources around me to be able to effectively carry  
2 this out. I would have had attorneys if I would have funds in  
3 which to use attorneys for.

4 The other thing I want to make sure is on the record,  
5 I completely agree with your Honor that I would like to have  
6 had counsel that I could have retained, but it's clear on the  
7 record that the government, and the Department of Justice knows  
8 it, they made that impossible for me.

9 I object to your comment that you have a feeling that  
10 Mr. Platt would not want to respond to me. It's our  
11 relationship that we have. I don't know how the Court has come  
12 to that conclusion, that he wasn't.

13 I think, most importantly, what we are seeing in this  
14 whole process is this no-contact list has been used to deny me  
15 access for almost an entire year and now, days before trial,  
16 seven days before trial, now, all of a sudden, these witnesses  
17 become available to me. That's patently unfair to me during  
18 this whole process.

19 And what we see is that the witnesses that we  
20 discussed, in terms of subpoenas that have been quashed, on the  
21 one hand, the no-contact list doesn't mean anything. On the  
22 other hand, it has done me a serious injustice as far as me  
23 preparing for trial, because I didn't have access to a lot of  
24 people. Now people are speculating that they don't want to  
25 talk to me. We don't know that, and we would have been able to

1 resolve this if the Federal Defenders in New York had done what  
2 I asked them to do in December of 2021.

3 THE COURT: Some of this has been covered in previous  
4 conferences, and I'll just note for the record that of course  
5 many criminal defendants are indigent and, under the  
6 Constitution, they then get counsel appointed free of charge,  
7 as was done in this case, through the Federal Defenders, and it  
8 was Mr. Dennis who made the decision to fire the Federal  
9 Defenders and to proceed *pro se*.

10 Notwithstanding that, Judge Schofield, though not  
11 required to, appointed a member of this Court's Criminal  
12 Justice Act panel to assist him as standby counsel, and he  
13 fired that counsel. And then I appointed still another member  
14 of the Criminal Justice Act panel to act as his standby  
15 counsel, and he fired that counsel. This was a choice that he  
16 made repeatedly and voluntarily.

17 But here is my ruling on the motion pending about the  
18 no contact with Mr. Platt.

19 Mr. Dennis is still free to reach out to Mr. Platt's  
20 counsel and to try to convince her that he should be able to  
21 have contact with Mr. Platt or that, through counsel, Mr. Platt  
22 can provide answers to his questions. She may agree to that.  
23 She may disagree to that. That's between her, her client, and  
24 Mr. Dennis. But I will permit Mr. Dennis to have contact with  
25 Ms. Waxman with respect to the possibility of Mr. Platt



1 testifying at trial. With that qualification, the subpoena is  
2 otherwise quashed.

3 MS. WAXMAN: Thank you, your Honor.

4 THE COURT: Let's turn next to the subpoena against  
5 Mr. Michael Mueller.

6 Would counsel for Mr. Mueller please identify himself.

7 MR. MUELLER: Thank you, your Honor. My name is  
8 Michael Todd Mueller, and my firm is the Mueller Law Firm.

9 THE COURT: You're moving to quash the subpoena  
10 against you.

11 MR. MUELLER: Yes, your Honor. I am the counsel for  
12 Mr. Dennis' exwife. I was retained in 2017, some five years  
13 ago, to enforce a 2015 judgment regarding unpaid child support  
14 and spousal support.

15 During the last five years, there may have been nine  
16 motions filed. The most recent was settled about a year ago,  
17 but the disputes continue.

18 And everything that Mr. Dennis asks for is germane to  
19 my representation of Ms. Bailey, and it would be highly  
20 prejudicial to provide these privileged documents to him which  
21 he could then use against my client. I believe, based on  
22 privilege alone, he is not entitled to my work product relating  
23 to a postjudgment divorce action.

24 I have also read some of the minutes from this case.  
25 I'm not a federal trial attorney. But it also appears to me

1 that everything he has asked for is not relevant to his defense  
2 of whether he did or not send harassing text messages.

3 THE COURT: Before I hear from Mr. Dennis, the first  
4 item on his subpoena to you is "all information provided by K&L  
5 Gates to you in Bailey v. Dennis in the Supreme Court of the  
6 State of New York from January 2019 through and including the  
7 date of Mr. Dennis' illegal expulsion from K&L Gates, which was  
8 not subject to a subpoena or Mr. Dennis' consent."

9 Now, it may not be the most artfully worded request,  
10 but I don't see how it calls for privileged documents. It  
11 calls for documents that were provided to you by K&L Gates.  
12 Where is any attorney-client privilege involved?

13 MR. MUELLER: Some of those documents related or  
14 requests by K&L Gates over their concerns of privilege relating  
15 to Mr. Dennis --

16 THE COURT: You are not here to assert their  
17 privilege.

18 MR. MUELLER: Your Honor, I know.

19 Also, all documents that I have sent to or requested  
20 of K&L Gates related to my enforcement of my client's divorce  
21 judgment, including, but not limited --

22 THE COURT: First of all, he is asking in this first  
23 request not for things you sent but things that they sent you.  
24 Secondly, anything you sent them would also not be privileged  
25 once it was disclosed to a third party.

1           So I think, at least as to the first argument you're  
2 making, and perhaps as to other of the communications called  
3 for in this subpoena, your privilege argument is frivolous and  
4 denied.

5           However, I'm at a loss to see any of the relevance of  
6 any of this to the upcoming trial.

7           Let me ask Mr. Dennis, what's the relevance?

8           THE DEFENDANT: The relevance, your Honor, once again,  
9 establishing the context in what my emails were -- your Honor,  
10 by the way, do you hear static when I'm talking?

11          THE COURT: No.

12          THE DEFENDANT: OK. It's coming clear to you because  
13 my parents and I, we are hearing static whenever I start  
14 speaking on our end.

15          THE COURT: I'm not hearing it on my end, and you are  
16 coming through loud and clear. Go ahead.

17          THE DEFENDANT: Once again, in establishing the  
18 context in which my emails were sent, this is all -- we are  
19 still referring to 2019. Essentially, the context is that some  
20 of my emails related to K&L Gates giving confidential  
21 information to my exwife's attorney without my knowledge or  
22 permission or consent.

23          THE COURT: So that might be conceivably relevant to  
24 your civil case, but what has that to do with the criminal  
25 case?

1 THE DEFENDANT: Once again, the criminal case, I have  
2 to show the context in which my emails were sent. My emails  
3 were sent in that context of asking them to please provide me  
4 with copies of the documents they said that they sent, asking  
5 them to please tell me why they sent it, in violation of all  
6 legal standards. So that's the context. They have  
7 basically -- again, this is another area -- similar to where  
8 emails were sent relating to asking them why they sent police  
9 to my home, this is another area where they criminalize  
10 legitimate communication.

11 THE COURT: I'm sorry. I don't see that any of this  
12 has any relevance to the criminal case, so the motion to quash  
13 is granted.

14 MR. MUELLER: Thank you, your Honor.

15 THE DEFENDANT: I just want to add to the record then.

16 At this point the Court has quashed every subpoena for  
17 every witness that I have sought. The Court has quashed every  
18 subpoena relating to K&L Gates bringing guns -- having police  
19 officers, armed police officers, coming to my home at night.  
20 They squashing subpoena relating to K&L Gates giving  
21 confidential information to my exwife's attorney without  
22 providing me copies. That context is what -- I want to have  
23 witnesses to show that context in which my emails were being  
24 sent, and I think that's materially adverse to me.

25 THE COURT: I'm sorry you disagree with the Court's

1 rulings, but the Court's rulings stand.

2 Let's turn to the motions *in limine*.

3 The government has filed a bunch of motions *in limine*.  
4 The defense did not respond. Under my rules, the defendant  
5 should have responded a week ago, but I'm not going to stand on  
6 that ceremony, and I will give Mr. Dennis an opportunity now to  
7 respond as we go through the individual motions *in limine*.

8 Let me start with the ones that I think are, frankly,  
9 open and shut, and then we will turn to the ones that may  
10 require further argument.

11 With respect to the government's motion to preclude  
12 the defendant from introducing evidence or arguing at the  
13 criminal trial that the New York County District Attorney's  
14 Office previously dismissed similar charges against him, while  
15 I would think the law is crystal clear that that argument and  
16 in evidence is not admissible in a criminal trial,  
17 nevertheless, if there is anything you wanted to say about  
18 that, Mr. Dennis, this is your opportunity.

19 THE DEFENDANT: Your Honor, as I've stated in the  
20 record before, in May of 2020, the District Attorney's Office  
21 of New York declined to indict me on charges similar to the  
22 ones that were brought in October of 2020, four months later.  
23 The threshold for indictment on the state level is lower than  
24 the threshold for the indictment on the federal level.

25 Now, as I have mentioned in my papers, the former U.S.

1 Attorney for the Southern District, Mr. Berman, has made an  
2 allegation that there was serious political influence in the  
3 Southern District after he was forced out of office between  
4 June of 2020 and December of 2020. My indictment was filed on  
5 October 28, 2020, which happened to be, obviously, a few days  
6 from the election. And what has been very public is that at  
7 that time the Justice Department was undergoing some serious  
8 ethical issues.

9           Since then, Senator Durbin has said that he has begun  
10 an investigation into the activities of the Southern District  
11 during the exact period of time when this indictment was filed  
12 against me. As I have said in my papers before, given the  
13 resources of the Department of Justice, I find it very, very  
14 difficult to believe that they would move forward on an  
15 indictment where the state, on a much less stringent threshold,  
16 decided not to, that they would do so without some sort of  
17 political influence, they would dedicate resources to a case of  
18 this type.

19           So I think it's important and in looking at,  
20 quote/unquote, what I have called the source of the conspiracy,  
21 which is not any longer -- the former U.S. Attorney for the  
22 Southern District saying, no, things were not done the way they  
23 typically were done, and it needs to be investigated.  
24 Understanding that only -- or someone like a Rosemary Alito,  
25 whose brother, Samuel Alito, sits on the Supreme Court of New

1 York, would have the ability or could have the ability, so  
2 could Jenny Thomas, of being able to influence the Southern  
3 District to bring a case based on an email harassment of former  
4 partners that the state refused to prosecute.

5 THE COURT: As you say, you have previously brought to  
6 the attention of the Court your conspiracy theory. But I think  
7 you're missing the narrow point of this motion. Whatever the  
8 prosecutorial decisions, either of another prosecutorial office  
9 or of, for that matter, the U.S. Attorney's Office in bringing  
10 an indictment, is totally irrelevant to the criminal case  
11 brought against you.

12 Indeed, I don't even allow in my practice as a judge  
13 the indictment to be presented to the jury. I explain to them  
14 what the charges are in short form. But I say to them, an  
15 indictment is not evidence. A charge is not evidence. The  
16 defendant is presumed innocent until and unless the government  
17 has established to the satisfaction of this jury his or her  
18 guilt beyond a reasonable doubt. So all of this is irrelevant  
19 to the trial.

20 So the motion to preclude the defendant from  
21 introducing evidence or arguing that the New York County  
22 District Attorney's Office previously dismissed similar charges  
23 against him is granted, and, similarly, the government's motion  
24 to preclude the defendant from introducing evidence or arguing  
25 any aspect of the government's prosecutorial motives and

1 investigative methods is granted.

2 The next motion.

3 THE DEFENDANT: Your Honor, before we leave that, just  
4 so I understand -- what am I able to say about these facts? Am  
5 I able to say, for example, to a jury that police officers came  
6 to my home in September of 2019, stating that I had  
7 basically -- was being accused by my partners of harassment and  
8 that they failed to deliver me papers, or any complaint at that  
9 time? Am I able to say that?

10 THE COURT: Certainly you are not able to say that in  
11 your role as a lawyer. If you take the stand and testify as a  
12 witness, I'm not going to rule yet whether you could bring that  
13 to the attention of the jury or not. I'd have to consider it  
14 against the context of the entire previous proceedings at  
15 trial.

16 But as a lawyer, like in your opening statements or  
17 your summation, you cannot say that. But you possibly could,  
18 I'm not ruling one way or the other, possibly could bring that  
19 up in your -- if you take the stand. But of course you may not  
20 want to take the stand. That's totally your choice.

21 THE DEFENDANT: Just so I'm clear, a lawyer could  
22 not -- if I had a separate lawyer representing me, they could  
23 not say, we are going to go through some of the things that  
24 occurred to Mr. Dennis and his prior law firm, and we are going  
25 to talk -- some of the things that occurred were the following



1 different things that occurred.

2 THE COURT: That's right. He could not, and I'll tell  
3 you why. A lawyer cannot in argument, either on opening or  
4 closing argument, refer to matters that are not in evidence and  
5 that are unlikely to come into evidence, and this is unlikely  
6 to come into evidence.

7 So the way it would work if you were represented by  
8 separate counsel, is, you cannot say one word about this on  
9 opening statement because of the unlikelihood it would come  
10 into evidence. If, nevertheless, the Court was ultimately  
11 persuaded to allow you to bring this into evidence, then you  
12 could, in your closing argument, refer to it, but only if it  
13 had come into evidence. That's because a lawyer can never  
14 refer to facts that are not part of the evidence or that are  
15 not likely to come into evidence.

16 Since you're representing yourself, when you are in  
17 your role as a lawyer, you have to abide by the rules governing  
18 the lawyer. And if you do take the stand, you will abide by  
19 the very different rules that apply to someone who is  
20 testifying.

21 Let me give you a more --

22 THE DEFENDANT: Can I ask you one question, your  
23 Honor, just so I'm clear?

24 THE COURT: Yes.

25 THE DEFENDANT: It's very likely -- is it very likely

1 that the jury will never, ever hear about the fact that police  
2 officers came to my home?

3 THE COURT: That's probably right, yeah.

4 THE DEFENDANT: And that police officers had me under  
5 surveillance under a contract by K&L Gates. That wouldn't come  
6 into evidence?

7 THE COURT: I don't know of any criminal trial where  
8 that has ever come into evidence before the jury. There are  
9 occasionally cases where motions are made pretrial regarding  
10 alleged police misconduct and those are treated as pretrial  
11 motions. And the Court either, if it is persuaded there was  
12 misconduct, may dismiss or narrow the indictment. And if the  
13 Court is not persuaded, then that's binding, but it doesn't  
14 come up at trial. It never comes up at trial, Mr. Dennis. I'm  
15 sorry.

16 THE DEFENDANT: Your Honor, I just get emotional  
17 because my family was in danger that night. I'm sorry that no  
18 one seems to understand that. It was at my home and police  
19 officers coming to my home at night. And we have seen people  
20 die. So I'm sorry if I keep harping on this, that no one ever  
21 will know this, that these police officers came at 10:00 at  
22 night.

23 THE COURT: Let's move on.

24 The next motion is that the defendant is precluded  
25 from producing evidence and argument about the potential

1 consequences of conviction. That, of course, is also  
2 well-established law. In every criminal case in this country  
3 every judge tells the jury in their instructions that the  
4 question of punishment is for the Court, not for the jury, and  
5 they should not consider it in any way, shape, or form.

6 Unless you have something contrary to that law which  
7 has been the law of the United States for 200 years,  
8 Mr. Dennis, I'm inclined to grant that motion.

9 THE DEFENDANT: I am just so flabbergasted. No one is  
10 going to know that police officers came to my house at the  
11 request of K&L Gates. I'm flabbergasted.

12 THE COURT: I'm sorry that you are not familiar with  
13 the law of the United States.

14 Let's go on to the next motion. The previous one is  
15 granted.

16 The motion is to preclude the defendant from producing  
17 evidence and argument concerning his commission of good acts  
18 and failure to commit bad acts. This refers to not the facts  
19 of this case, but in general, so-called propensity evidence.

20 Just to move this along, because these are familiar  
21 areas, that motion is granted with the proviso that if the  
22 government opens the door through some of their witnesses, if,  
23 for example, some witness were to blurt out, even though not  
24 asked to do so by the government, oh, we always thought  
25 Mr. Dennis is a bad guy, that would open the door, in my view,

1 to his introducing some evidence that he's really a good guy.  
2 So I just want to make clear -- that's really true of all my  
3 rulings here today. All my rulings excluding evidence are  
4 subject to the qualification that if the door is opened, then  
5 they may be revisited.

6 The next motion is: Defendant is precluded from  
7 introducing evidence and argument concerning his family  
8 background, parents, children, health, age, religion, or other  
9 personal attributes.

10 Now, I think the law on that is also quite clear. If  
11 Mr. Dennis takes the stand, if he chooses, which is totally his  
12 choice to testify, then much of that background is admissible  
13 under well-established Supreme Court precedent. If he doesn't  
14 take the stand, then virtually all of that is inadmissible.

15 And the reason for that, says the Supreme Court of the  
16 United States in decisions that, again, go back at least 50  
17 years, probably longer, is that the jury has a right to know  
18 about the general background of someone who is testifying and  
19 that is relevant to their assessing the credibility and  
20 meaningfulness of the testimony.

21 Mr. Dennis, you cannot get into any of that in your  
22 argument as a lawyer, but if you do take the stand, you can get  
23 into at least some of that.

24 The next motion is that the defendant is precluded  
25 from attempting to litigate civil claims against his former

1 firm and its partners, referring to the civil case that has  
2 been stayed. The motion, as propounded, is a little vague.  
3 But in the government's supplemental papers the government says  
4 this, and this is at page 5 of the government's motions *in*  
5 *limine* brief: "Although it is permissible for the defendant to  
6 cross-examine government witnesses with appropriate questions  
7 regarding any potential motive, bias, or impeachment, including  
8 the fact that the defendant is currently suing the law firm and  
9 certain of its employees, the allegations themselves are not  
10 evidence."

11 What that means, Mr. Dennis, is when you are  
12 cross-examining a K&L witness, for example, you can say, isn't  
13 it true that you were sued by me in a suit that's still ongoing  
14 in federal court in which I accused you of X, Y, and Z. What  
15 you can't say is, and isn't that true? Aren't those  
16 allegations true? That would be getting off into a side  
17 litigation of your civil case.

18 Let me hear if there is anything you wanted to say  
19 about this.

20 THE DEFENDANT: Yeah. I think, your Honor, the most  
21 important -- there are two important facts that I kind of  
22 directed before, which is, one, that the civil matter was  
23 stayed because of what the judge said at the time, the  
24 overlapping issues of business, business issues, facts, and  
25 people.

1 Now, at this point what I'll add to that is that what  
2 is absolutely crystal clear, according to the record, is that  
3 the civil claim began months before this criminal action began.  
4 So it wasn't like the civil action started after the criminal.  
5 The civil started first and then seven months, eight months  
6 later the criminal started. So if I can demonstrate that K&L  
7 Gates is retaliating against me, that's my way of showing  
8 intent.

9 I feel it's not fair, given that the civil action  
10 began first, the criminal action followed much, much later, and  
11 there has been an agreement by all the parties that there is an  
12 overlap of the issues, facts, and people. I think the  
13 government would have had a much stronger argument if the  
14 criminal case hadn't started and then I filed a civil action,  
15 but it didn't happen in that order.

16 THE COURT: Mr. Dennis, we really discussed this at  
17 great length at the last conference, so I won't take up more  
18 time as to how the stay of the first filed civil case is the  
19 norm when there is a later-filed criminal case.

20 Just so we are clear on the last motion, the motion is  
21 granted in the limited respects that I've indicated, but it  
22 doesn't preclude, and the government is not asking it to  
23 preclude, Mr. Dennis from cross-examining witnesses as to the  
24 fact that he has brought a lawsuit against them, making serious  
25 charges, because that would affect the jury's assessment of

1 their credibility.

2 The next motion is, the government seeks admission of  
3 evidence of Mr. Dennis' other allegedly harassing behavior,  
4 such as physical harassment.

5 I never decide those motions at this stage. This is  
6 classic 404(b) material. It will be affected by the position  
7 that Mr. Dennis takes in his opening statement, what position  
8 he says his defense is, and it will be affected by other  
9 considerations, including whether the relevance of any of this  
10 would in any particular case be outweighed by the prejudice to  
11 Mr. Dennis, and I can't assess that in advance, so that will be  
12 taken up on a case-by-case basis.

13 And the way that works is, before the government wants  
14 to put a question involving this, they will either, at that  
15 very moment or in an earlier break just very shortly before, if  
16 there happens to be a break very shortly before, raised that  
17 they are proposing to ask this question, and I will rule then.  
18 When you are about to ask that question, if we have not had a  
19 break before then, just request a sidebar, and I'll rule at the  
20 sidebar outside the presence of the jury.

21 The next is: The government seeks admission of  
22 limited background testimony concerning Mr. Dennis' firing from  
23 K&L Gates, and specifically the government seeks to admit  
24 testimony that Mr. Dennis was denied access to K&L Gates'  
25 premises and email system and was terminated by K&L Gates

1 thereafter. And the government says this is relevant to  
2 showing Mr. Dennis' intent because he continued to violate that  
3 or found ways around that, for example, by using his personal  
4 email in place of K&L email and the like.

5 I don't disagree that that might be relevant, but I  
6 think that does open the door to a great deal of what I've  
7 excluded, so I'll leave it with this with the government. If  
8 you get into that kind of evidence, you are very likely opening  
9 the door to Mr. Dennis' suggestion that he was fired for other  
10 reasons that he was being retaliated against and so forth. You  
11 may not want to get into that, but I'll leave that to you.

12 Then the government seeks the ruling that  
13 communications from K&L Gates instructing Mr. Dennis to cease  
14 harassment are not hearsay. They clearly are not hearsay  
15 because they are not being offered for the truth. I am not  
16 totally sure about the relevance in any given situation, but we  
17 can take that up at the time if there is an objection to it by  
18 Mr. Dennis.

19 Next, I've already indicated the government has moved  
20 to preclude any evidence or argument about the government's  
21 charging decisions in this case, and I've already indicated  
22 that motion is granted.

23 Next, the government seeks to preclude  
24 cross-examination on topics regarding a witness' compensation  
25 or wealth or a witness' alleged poor work performance. That



1 motion is granted with the caveat, again, that if the door gets  
2 opened -- I don't see how the door would ever be opened on the  
3 question of compensation, but I think it's conceivable that the  
4 door might be opened on the question of poor work performance  
5 if the suggestion was, by Mr. Dennis, that the reason he was  
6 sending certain emails was to comment on the poor work  
7 performance, or something of that sort. So we will deal with  
8 that as it comes up at trial, but, otherwise, the motion is  
9 granted.

10 THE DEFENDANT: Your Honor, what would be -- as for  
11 compensation, obviously, once again, if we look at the overlap  
12 of those people -- what if the compensation of someone  
13 testifying against me has gone up significantly from the time  
14 when this matter began and now that they are testifying against  
15 me?

16 THE COURT: What's the relevance? I think it's all  
17 irrelevant.

18 THE DEFENDANT: To testify against me, you don't think  
19 that might be relevant?

20 THE COURT: What's the relevance? I assume that all  
21 these folks made a lot of money, that being the prevailing norm  
22 in the legal profession in large law firms. But so what?

23 THE DEFENDANT: I think you give my partners more the  
24 benefit of the doubt than I do. As I put in the record before,  
25 documents from someone else's wife. If you're sending police

1 to someone's home, I don't give you the same benefit of the  
2 doubt in terms of ethics that the Court might, but that's just  
3 me.

4 THE COURT: Now I want to turn to the two matters that  
5 the government wanted to submit something in camera. Before we  
6 get to that, let me just mention a couple of things about the  
7 first day of trial.

8 I'm told it's a very busy day with many trials. I'm  
9 told that the jury pool will be available at 11:30, so you  
10 should be here in the courtroom at 11:15 in case there is  
11 anything we have to take up at the last minute.

12 Mr. Dennis, obviously, that's true for you, so you  
13 need to be in courtroom 14B by 11:15 on Tuesday.

14 Secondly, how long does the government want for its  
15 opening statement?

16 MS. KUSHNER: Approximately nine to ten minutes.

17 THE COURT: Mr. Dennis, how long do you want for your  
18 opening statement?

19 You're on mute, Mr. Dennis.

20 THE DEFENDANT: I'm sorry, your Honor. I'm still  
21 rethinking my strategy. So because of what has occurred here  
22 today, because of not having any witnesses from K&L Gates'  
23 management team, actually all my witnesses have been denied.  
24 So I'm only having the witnesses provided by the government at  
25 this point. So I have to -- I would say 30 minutes.

1 THE COURT: Here is my policy. I allow opening  
2 statements up to 30 minutes, although I need to caution counsel  
3 that opening statements for a jury that has not yet heard any  
4 of the actual testimony can't get into a great deal of minute  
5 detail because that will be lost on the jury at that stage.  
6 You can save that for summation.

7 But I will give each side a half hour, since  
8 Mr. Dennis has requested up to a half hour. You don't need to  
9 use a half hour, but you have up to a half hour.

10 My practice is, when you get down to people who ask  
11 for a full half hour, when you get down to 28 minutes, I will  
12 interrupt and say, you have two minutes left, just so you know  
13 you need to finish. I will never allow anyone to go past a  
14 half hour. Half hour for opening statements.

15 THE DEFENDANT: Your Honor, with respect to the jury  
16 pool, can you walk me -- we are on at 11:30. Do we begin the  
17 selection of the jury at that point?

18 THE COURT: Yes. Here is how we pick a jury. We will  
19 seat 12 people in the jury box. I will question them and it  
20 may be that one or more will be excused for cause for legal  
21 reasons. We will then replace those one or two. After I  
22 finish the questioning, then counsel for each side get what are  
23 called peremptory challenges, which means that each side can  
24 excuse jurors in the numbers that I'm about to give you, for  
25 virtually any reason except forbidden reasons of race, gender,

1 or other protected status.

2 The government gets six challenges. The defendant  
3 gets ten. So the way we work this is, we have six rounds. In  
4 the first four rounds the government has one challenge and you,  
5 Mr. Dennis, have two. And then in the last two rounds it's one  
6 and one. So that works out to six for the government and ten  
7 for you.

8 The way you exercise a challenge is, my courtroom  
9 deputy will show you the board. I think you can see, she is  
10 holding up the board. And the board will have the cards of the  
11 jurors, and you will just turn over the card of the juror you  
12 want excused on a particular round. Then we will replace that  
13 juror. So typically in one of the first four rounds there will  
14 be three challenges, one by government, two by you, and we will  
15 call up three new people. I will question them again for  
16 cause. Assuming there are no problems then, you will exercise  
17 your next round of challenges.

18 In addition, we will select three alternate jurors,  
19 just in case a juror gets sick or something like that. Usually  
20 it's -- we don't need three, but better to err on the side of  
21 caution. And with respect to those three, the government will  
22 have one challenge and the defense will have two. So it will  
23 be just one round of challenges, but, again, you'll have twice  
24 as many as the government. That's the way it works.

25 Any questions, Mr. Dennis, about that?

1 THE DEFENDANT: No. How long will the process go?

2 THE COURT: An hour.

3 THE DEFENDANT: OK.

4 THE COURT: Assuming we start promptly at 11:30, we  
5 will finish picking the jury by 12:30. We will then let them  
6 go to lunch. Then we will start opening statements and the  
7 testimony of witnesses right after lunch.

8 We will normally sit from 9:30 to 4:30 Monday through  
9 Friday. Occasionally I may have something that requires us to  
10 end at 4 rather than 4:30 or to start a little later, but I'll  
11 let you know the day before if that eventuates, but, otherwise,  
12 the norm will be 9:30 to 4:30. We will take a midmorning break  
13 for about 10 or 15 minutes, roughly around 11. We will take  
14 lunch for one hour sometime between 12:30 and 1. And we will  
15 take a midafternoon break sometime around 3, again, for about  
16 10 or 15 minutes.

17 Any questions, Mr. Dennis, about any of that process?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Is there anything else that the government  
20 wishes to raise before we get to those two submissions?

21 MS. KUSHNER: One thing, your Honor. Just based on  
22 the defendant's statements today, the government would also  
23 move to preclude any evidence, argument, or testimony regarding  
24 his lack of funds or financial situation, any suggestion that  
25 he has less resources than the government, that the government

1 has put him in a place where he is not able to afford counsel,  
2 that he was not afforded the right to have counsel, and that  
3 the government somehow has prevented him from seeing his kids.

4 THE COURT: Actually, that motion is granted.

5 But I must say, it would have been very foolish for  
6 Mr. Dennis to raise that with the jury because then I would  
7 have been required to give the history of how he fired all  
8 these folks. But that won't be necessary because the motion is  
9 granted.

10 THE DEFENDANT: Your Honor, I would like to add to the  
11 record again. Again, Mr. Kelly and the Federal Defenders  
12 represented me from November of 2021 until June 28 of 2022.  
13 They never issued a single subpoena. They never filed a speedy  
14 trial motion.

15 With respect to one, if they had issued a subpoena, we  
16 would not be at this point still talking about the subpoena  
17 days before trial. If they had to file a speedy trial motion,  
18 this trial would be over at this point.

19 And the reason why Judge Schofield allowed me to have  
20 a court-appointed attorney was because she recognized all these  
21 delays, which were unnecessary. That was the reason why she  
22 gave me the court-appointed attorney. Not because -- because I  
23 terminated them, and she wanted to see the trial move forward  
24 as quickly as possible. Her reasons for doing that, without  
25 looking at this record, she reviewed all this information. I

1 don't know what the Court has, the new Court has, but she  
2 reviewed this information and realized that there was something  
3 wrong. That's why she appointed the --

4 THE COURT: Of course, I don't discuss this case with  
5 Judge Schofield, but I do look at the record. I don't think  
6 that comports with the record as I read it.

7 As I've mentioned to you several times now, if you  
8 feel that you were inadequately represented by the Federal  
9 Defenders, then you are still free to bring a separate motion  
10 for inadequate representation of counsel. And I will consider  
11 that motion if and when it's raised, but it's not a question  
12 for the jury. It's a separate legal question and, therefore,  
13 can't be the subject of presentation to the jury.

14 THE DEFENDANT: You seem to hold it against me. I  
15 don't understand why.

16 THE COURT: Mr. Dennis, I don't hold it against you at  
17 all. I indicated that was totally your right. I think I don't  
18 agree with, that it was an exercise of good judgment, but  
19 that's a different question. I don't hold it against you.

20 As I mentioned at the close of the last hearing,  
21 you're clearly an intelligent man. You are a lawyer. And if  
22 you reached a decision that you felt was the right one in your  
23 interest, that's certainly your prerogative. So I don't hold  
24 it against you in any way, shape, or form. I'm just pointing  
25 out that it's not an issue to be presented to the jury.

1 THE DEFENDANT: Does your Honor believe that they  
2 should have filed any subpoenas after Judge Schofield set a  
3 trial date on April 4?

4 THE COURT: I'm sorry?

5 THE DEFENDANT: Does your Honor believe that the  
6 Federal Defenders of New York should have filed subpoenas after  
7 Judge Schofield set a trial date on April 4, 2022?

8 THE COURT: I don't have a view on that. I would have  
9 to go back and look. But I don't comment on that.

10 We need to move on because of my time constraints. So  
11 at this point we will excuse the people in the audience.

12 THE DEFENDANT: Before they go, your Honor, I have two  
13 issues that I wanted to bring up.

14 THE COURT: Go ahead.

15 THE DEFENDANT: One is, I have been trying to assemble  
16 my witnesses, one including Bradford Smith, the president of  
17 Microsoft. I employed Nationwide Court Services to serve them,  
18 and they have tried repeatedly. I put this in my filings to  
19 the Court. And because Microsoft has a campus, they have been  
20 unable to provide any -- they have been unable to serve him.  
21 I've asked the Court to please permit Nationwide to serve the  
22 subpoena via email --

23 THE COURT: I will consider that. I don't have that  
24 subpoena right in front of me. What is it that you're seeking  
25 from him?



1 THE DEFENDANT: I don't have that subpoena in front of  
2 me also. You approved it.

3 THE COURT: I approved it for service, absolutely  
4 right. I understand that you are saying your process server  
5 hasn't been able to serve it, through no fault of the process  
6 server, and, therefore, you want me to approve service by mail.  
7 And I may well grant that, but before I do, I wanted to find  
8 out exactly what it was that you were seeking from him. And,  
9 yes, I had approved that subpoena for service. But I think, in  
10 light of the time constraints, we should at least take a quick  
11 look and make sure that it relates to something that has  
12 bearing on this case.

13 But I'll tell you what I will do, if this is agreeable  
14 to you, Mr. Dennis. I will take a look at it. And when we  
15 meet on Tuesday at 11:15, if you still convince me that we  
16 should have service by mail, I will allow that and, of course,  
17 we can just adjust the date by 24 hours, or something like  
18 that. The trial is not going to end on that first day. So he  
19 would still need to respond.

20 THE DEFENDANT: OK.

21 Your Honor, one of the reasons, but it's not the only  
22 reason, that I was trying to get Mr. Smith's testimony was  
23 because, as the record will show, I sent Mr. Smith an email on  
24 October 16 of 2020 discussing how K&L Gates' servers had most  
25 likely been penetrated in Beijing and Shanghai and Taipei.

1 Included in one of the filings is also the fact that  
2 it was subsequently showed that Microsoft had been penetrated  
3 by servers -- by agents in Beijing, Taipei and Shanghai.

4 In any event, to make another coincidence, I was  
5 actually indicted in the Southern District of New York during  
6 the period after Mr. Berman had been -- he claimed there was  
7 political influence. I was indicted 12 days after sending that  
8 email to Mr. Smith, without ever being interviewed or talked to  
9 by the Justice Department. And so that was one -- there are  
10 several other issues, but that was one issue and it became more  
11 important, particularly after Mr. Berman came forward and  
12 started talking about the influence that was going on, and,  
13 once again, it triggered my mind as to why would the Justice  
14 Department --

15 THE COURT: Have you read Mr. Berman's --

16 THE DEFENDANT: Using the resources that they have to  
17 prosecute an email harassment case with only three witnesses.

18 THE COURT: Excuse me. We need to move this along.  
19 I'm sorry.

20 Let me just ask you, since you keep raising it, have  
21 you read Mr. Berman's book, which came out about two weeks ago?  
22 Because in that book --

23 THE DEFENDANT: I only read Senator Durbin's --

24 THE COURT: You might want to read Mr. Berman's book  
25 because he goes to great lengths to demonstrate how the

1 Southern District of New York retained its integrity and its  
2 independence during a period when it was under pressure from  
3 the Department of Justice to do otherwise. I have no opinion  
4 whether that's true or false, but that's what he is saying in  
5 his book.

6 THE DEFENDANT: I'm sure Senator Durbin read his book  
7 and, despite reading it, still thought an investigation was  
8 appropriate. Investigations aren't started very easily.

9 THE COURT: We really need to move along, so I am  
10 going to excuse the two -- excuse me.

11 Mr. Dennis, do not interrupt me.

12 THE DEFENDANT: Your Honor, there was one issue which  
13 is really critical, which is, you were going to rule on the  
14 no-contact list. You were going to rule whether I could now  
15 contact anyone off that list.

16 THE COURT: Here is my ruling on that, which is, you  
17 may contact anyone on that list who is represented by counsel,  
18 but you may not contact them unless counsel then agrees to your  
19 contacting them. You know their counsel because they appeared  
20 in quashing the subpoenas. So you can contact counsel.

21 And I'll ask the government, since Ms. Waxman was just  
22 excused from the courtroom before this came up, to let her know  
23 the result.

24 You can contact counsel for any of those witnesses.  
25 If they are willing to have you talk to their clients, that's

1 fine. But, as a lawyer, I'm sure you know it's something that  
2 we all learned in law school. When someone is represented by a  
3 lawyer, you can't contact them directly. You have to go  
4 through their lawyer.

5 That's my ruling.

6 THE DEFENDANT: I think my question is, I'm not  
7 talking about contacting anyone who has a lawyer. The  
8 no-contact list has been used to prevent me from contacting my  
9 potential witnesses in the arbitration. Other than Mr. Platt,  
10 there are other people on there, and I did not subpoena them.

11 THE COURT: Your own witnesses, if they are  
12 represented by counsel, you still have to contact them through  
13 their counsel. That rule, which, again, goes back several  
14 hundred years, is that if someone is represented by counsel and  
15 you want to have them appear for either side, your side or the  
16 other side, in a litigation, you cannot contact them  
17 personally. You have to go through their counsel. That is  
18 very well-established law.

19 THE DEFENDANT: I'm talking about contacting people  
20 who are not involved in this matter and who do not have  
21 representation and are included on that list.

22 THE COURT: Who are we talking about?

23 THE DEFENDANT: The list has no value, has no meaning.  
24 I don't have the names. I'm operating within the ethical  
25 standards. I just want to contact these people who are not

1 parties and have no lawyer.

2 THE COURT: I asked you a very specific question  
3 because --

4 THE DEFENDANT: Everyone on the list who is not a  
5 party to this matter and does not have an attorney.

6 THE COURT: That doesn't tell me who they are.

7 As I pointed out when we were dealing with Mr. Platt,  
8 this has to be done on an individual basis because, for  
9 example, if you wanted to contact directly someone who had been  
10 allegedly the subject of very severe harassment who was not  
11 represented by counsel, that would present a different kind of  
12 question than was presented by someone like Mr. Platt. So --  
13 I'm sorry, but the Court has ruled and here is my ruling, just  
14 so we can move on.

15 With respect to anyone on the no-contact list who you  
16 know is represented by counsel because of the subpoena practice  
17 that we have just gone through, you are free to contact their  
18 counsel, but not them.

19 With respect to anyone who is not represented by  
20 counsel who you want to contact, you first have to identify who  
21 they are, and then I will hear from both sides as to whether  
22 contact with them is appropriate.

23 Now, we will move on and this portion --

24 THE DEFENDANT: Your Honor, I have two other issues,  
25 and I'm *pro se*.

1 THE COURT: No. Excuse me. I will hear your issues,  
2 if we have time, after we have dealt with the two remaining  
3 issues that I knew in advance. You said to me not five minutes  
4 you had two issues. You raised both of them. I ruled on both  
5 of them. Now you have two more. You are going to hold on  
6 until the end of this hearing.

7 And right now we will go into a sealed proceeding with  
8 this portion of the record -- excuse me. This portion of the  
9 hearing -- Mr. Dennis, be quiet -- with this portion of the  
10 hearing available only -- the record available only to  
11 Mr. Dennis, government counsel, and the Court, except upon  
12 further order of the Court.

13 (Pages 47-50 SEALED)  
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1 THE COURT: We are back on the unsealed record.

2 We have ten minutes, but you had two other things you  
3 wanted to raise. Go ahead.

4 THE DEFENDANT: One thing, your Honor, is, I have to  
5 get approval from pretrial in order to come to New York for  
6 trial and to be able to stay overnight, so I'm working on that.

7 In discussing that with pretrial, one of the issues I  
8 raised with them is, I don't have -- I don't have any money to  
9 pay for a hotel, so I'm in the process of trying to identify  
10 someone who will allow me to stay with them through the course  
11 of the trial, but I haven't identified anyone at this point.  
12 So whereas I could provide pretrial with a flight number -- of  
13 my travel plans to New York, I won't know until the last minute  
14 where I'll be housed.

15 THE COURT: By the last minute, we are talking Monday?  
16 You have to be here on Tuesday at 11:15. So I assume you are  
17 going to come in on Monday, from what you just said.

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: The courthouse is closed on Monday, but I  
20 will have my law clerk make arrangements with the pretrial  
21 services officer so that they are available or will have  
22 someone on their staff available to approve your flight plans  
23 and housing plans up to noon on Monday.

24 What you need to do is, when you have those  
25 arrangements in mind, contact Mr. Kern. You have his email.

1 And he will then arrange to get it to pretrial services so they  
2 can respond quickly.

3 THE DEFENDANT: OK.

4 To be clear, I will have my hotel done today, my  
5 travel.

6 THE COURT: Great. If you can get it done today,  
7 that's even better because pretrial services is here today  
8 until at least 5:00.

9 THE DEFENDANT: OK.

10 THE COURT: Was there anything else?

11 THE DEFENDANT: No, at this point.

12 THE COURT: Very good.

13 MS. KUSHNER: Your Honor, just to clarify the judge's  
14 ruling about the dates when the defendant was terminated from  
15 the law firm, not that the government necessarily would, but  
16 would it be proper to say that at some point the defendant  
17 stopped working at the firm, without any regard for why?

18 THE COURT: That you can say.

19 MS. KUSHNER: Thank you.

20 THE DEFENDANT: What exactly is she permitted to say?

21 THE COURT: She is saying even if they can't bring  
22 into evidence that you were terminated from the firm without  
23 opening the door, that can she at least bring out that you are  
24 no longer working at K&L Gates, and I said, yes, that would not  
25 open the door. That's a much more neutral statement. People



1 change jobs all the time in the modern legal world.

2 Very good. I appreciate everyone's help.

3 THE DEFENDANT: My only concern, just for the record,  
4 is that if -- it's clear that I'm no longer working at K&L  
5 Gates. If she somehow tries to inquire why I'm not working  
6 there, I would be concerned.

7 THE COURT: Of course. As I indicated in your favor,  
8 that might open the door.

9 Very good. Thanks very much.

10 (Adjourned)